

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOHN ZIRKLE and GREEN KING, INC.,
d/b/a SUBWAY,

Plaintiffs,

vs.

Civil Action No: 1:15-cv-82 (Keeley)

VALLEY FORGE INSURANCE COMPANY,
CONTINENTAL CASUALTY COMPANY,
ENGLE MARTIN AND ASSOCIATES, INC.,
and THE HILL CORPORATION,

Electronically filed: May 15, 2015

Defendants.

NOTICE OF REMOVAL

Defendants, Valley Forge Insurance Company and Continental Casualty Company, by the undersigned counsel, and in accordance with 28 U.S.C. §§ 1441 and 1442, hereby remove the above-captioned action from the Circuit Court of Harrison County, West Virginia, to the United States District Court for the Northern District of West Virginia. In support thereof, Defendants state the following grounds for removal:

1. Plaintiffs, John Zirkle and Green King, Inc., d/b/a Subway, filed a Complaint against Defendants on April 13, 2015, in the Circuit Court of Harrison County, West Virginia, bearing Civil Action No. 15-C-156-1. Copies of the Summons and Complaint are attached hereto as Exhibit 1.
2. Defendants Valley Forge Insurance Company and Continental Casualty Company were served with Plaintiffs' Summons and Complaint on April 23, 2015.

Because this Notice of Removal is being filed within thirty (30) days after April 23, 2015, removal is timely under 28 U.S.C. § 1446(b).

3. Plaintiffs allege breach of contract, bad faith, unfair trade practices act violations and "Hayseeds" claims against Defendants Valley Forge Insurance Company and Continental Casual Company all with regard to an insurance claim following a fire and the subject insurance policy.

4. Plaintiff, Green King, Inc., is a West Virginia corporation doing business in Harrison County and is owned by John Zirkle. Plaintiff, John Zirkle, is a resident of Harrison County, West Virginia.

5. The claims against The Hill Corporation are negligence claims alleging lack of reasonable care in providing a building without firewalls or other reasonable measures to contain a fire.

6. Defendant, Valley Forge Insurance Company, is an insurance company authorized to do business in West Virginia.

7. Defendant, Continental Casualty Company, is an insurance company authorized to do business in West Virginia.

8. Defendant, Engle Martin and Associates, Inc., is a Georgia corporation. Engle Martin consents to the removal.

9. Defendant, The Hill Corporation, is a dissolved West Virginia corporation. Counsel for The Hill Corporation consents to the removal.

10. Because there is diversity between the viable parties to this action, this Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332, in that this action is a civil action where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs and the Plaintiff and Defendant Engle Martin are citizens of different states. As to the dissolved West Virginia corporation, these defendants allege fraudulent misjoinder.

11. Pursuant to 28 U.S.C. § 1441(a), any civil action brought in a State of which the district courts of the United States have jurisdiction may be removed by the defendants of the district court of the United States for the district and division embracing where such action is pending.

12. Removal of this action to this Court is proper pursuant to 28 U.S.C. § 1441 because the Circuit court of Harrison County, West Virginia, is located within the geographical area embraced by the United States District for the Northern District of West Virginia under 28 U.S.C. § 129.

13. Pursuant to 28 U.S.C. § 1446(d), prompt written notice of this Petition for Removal is being provided to Plaintiff through counsel of record and to the Clerk of Court for the Circuit Court of Harrison County, West Virginia. A Notification of Removal to United States District Court is attached hereto.

WHEREFORE, Defendants, Valley Forge Insurance Company and Continental Casualty Company, submit that this matter is properly removed from the Circuit Court of Harrison County, West Virginia, to this Court.

Respectfully submitted,

DiBELLA GEER McALLISTER BEST

BY: 

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within NOTICE OF REMOVAL has been forwarded to all counsel of record by email this 15th day of May, 2015.

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